
HOUSE BILL No. 1809

DIGEST OF INTRODUCED BILL

Citations Affected: IC 2-5-1.1-7.5; IC 4-2-6-4; IC 5-14; IC 8-1; IC 8-15.5-4-6; IC 8-15.7-4-6; IC 33-23-5-4; IC 33-27-3-2.

Synopsis: Public records. Provides that a certificate of franchise authority is a public record. Requires records generated or received by a private contractor that receives public funds to conduct a study or prepare a report for a state or local government agency to be available for public inspection and copying. Allows a public agency (including a toll road authority and the department of transportation) to withhold records relating to the discussions and negotiations from public inspection and copying until after discussions and negotiations have ended. Provides that records relating to discussions or negotiations between a public agency and a nongovernmental entity to provide services that are provided directly by the employees of a state agency may be withheld from disclosure while discussions and negotiations are in progress, but must be disclosed after negotiations have been completed.

Effective: July 1, 2007.

Pierce, Welch

January 26, 2007, read first time and referred to Committee on Commerce, Energy and Utilities.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1809

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 2-5-1.1-7.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7.5. (a) For purposes
3 of ~~IC 5-14-3-4(b)(13)~~, **IC 5-14-3-4(b)(14)**, the work product of the
4 legislative services agency includes an electronic geographic
5 information system produced from data:

- 6 (1) gathered by the legislative services agency; and
7 (2) processed using proprietary software that has been licensed to
8 the legislative services agency.

9 (b) This subsection applies to a public agency (as defined by
10 IC 5-14-3-2) with access to the information described by subsection
11 (a). A paper copy of a map that can be printed using the geographic
12 information system described in subsection (a) must be available to any
13 person under rules approved by the legislative council. Electronic
14 copies of the information are available only under rules approved by
15 the legislative council.

16 SECTION 2. IC 4-2-6-4, AS AMENDED BY P.L.89-2006,
17 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2007]: Sec. 4. (a) The commission may do any of the following:

(1) Upon a vote of four (4) members, refer any matter within the inspector general's authority to the inspector general for investigation.

(2) Receive and hear any complaint filed with the commission by the inspector general that alleges a violation of:

(A) this chapter;

(B) a rule adopted under this chapter;

(C) IC 4-2-7;

(D) a rule adopted under IC 4-2-7;

(E) IC 4-2-8; or

(F) a rule adopted under IC 4-2-8.

(3) Obtain information and, upon a vote of four (4) members, compel the attendance and testimony of witnesses and the production of pertinent books and papers by a subpoena enforceable by the circuit or superior court of the county where the subpoena is to be issued.

(4) Recommend legislation to the general assembly relating to the conduct and ethics of state officers, employees, special state appointees, and persons who have business relationships with agencies.

(5) Adopt rules under IC 4-22-2 to implement this chapter.

(6) Accept and file information:

(A) voluntarily supplied; and

(B) that exceeds the requirements of this chapter.

(7) Conduct research.

(b) The commission shall do the following:

(1) Act as an advisory body by issuing advisory opinions to interpret this chapter, IC 4-2-7, or the rules adopted under this chapter or IC 4-2-7, upon:

(A) request of:

(i) a state officer or a former state officer;

(ii) an employee or a former employee;

(iii) a person who has or had a business relationship with an agency;

(iv) a special state appointee or former special state appointee; or

(v) the inspector general; or

(B) motion of the commission.

(2) Conduct its proceedings in the following manner:

(A) When a complaint is filed with the commission, the

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commission may:

(i) reject, without further proceedings, a complaint that the commission considers frivolous or inconsequential;

(ii) reject, without further proceedings, a complaint that the commission is satisfied has been dealt with appropriately by an agency;

(iii) upon the vote of four (4) members, determine that the complaint does not allege facts sufficient to constitute a violation of this chapter or the code of ethics and dismiss the complaint; or

(iv) forward a copy of the complaint to the attorney general, the prosecuting attorney of the county in which the alleged violation occurred, the state board of accounts, a state officer, the appointing authority, or other appropriate person for action, and stay the commission's proceedings pending the other action.

(B) If a complaint is not disposed of under clause (A), a copy of the complaint shall be sent to the person alleged to have committed the violation.

(C) If the complaint is not disposed of under clause (A), the commission may promptly refer the alleged violation for additional investigation by the inspector general. If the commission finds by a majority vote that probable cause exists to support an alleged violation, it shall set a public hearing on the matter. The respondent shall be notified within fifteen (15) days of the commission's determination. Except as provided in this section, the commission's evidence relating to an investigation is confidential.

(D) A complaint filed with the commission is open for public inspection after the commission finds that probable cause exists. However, a complaint filed by the inspector general that contains confidential information under IC 4-2-7-8 may be redacted to exclude the confidential information. Every hearing and other proceeding in which evidence is received by the commission is open to the public. Investigative reports by the inspector general that are not filed with the commission may be kept confidential.

(E) A:

(i) complaint that is filed with; or

(ii) proceeding that is held by;

the commission before the commission has found probable cause is confidential unless the target of the investigation

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elects to have information disclosed, or the commission elects to respond to public statements by the person who filed the complaint.

(F) The commission may acknowledge:

(i) the existence and scope of an investigation before the finding of probable cause; or

(ii) that the commission did not find probable cause to support an alleged violation.

(G) If a hearing is to be held, the respondent may examine and make copies of all evidence in the commission's possession relating to the charges. At the hearing, the charged party shall be afforded appropriate due process protection consistent with IC 4-21.5, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses.

(H) After the hearing, the commission shall state its findings of fact. If the commission, based on a preponderance of the evidence, finds by a majority vote that the respondent has violated this chapter, IC 4-2-7, IC 4-2-8, or a rule adopted under this chapter, IC 4-2-7, or IC 4-2-8, it shall state its findings in writing in a report, which shall be supported and signed by a majority of the commission members and shall be made public.

(I) If the commission, based on a preponderance of the evidence, finds by a majority vote a violation of this chapter, IC 4-2-7, IC 4-2-8, or a rule adopted under this chapter, IC 4-2-7, or IC 4-2-8, the commission may also take any of the actions provided in section 12 of this chapter.

(J) The report required under clause (H) shall be presented to:

(i) the respondent;

(ii) the appointing authority or state officer of the employee, former employee, or special state appointee;

(iii) the appointing authority or state officer of an agency or office that has a business relationship with the person sanctioned; and

(iv) the governor.

(K) The commission may also forward the report to any of the following:

(i) The prosecuting attorney of each county in which the violation occurred.

(ii) The state board of accounts.

(iii) The state personnel director.

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(iv) The attorney general.

(v) A state officer.

(vi) The appointing authority of the state employee or agency that has a business relationship with the person sanctioned.

(vii) Any other appropriate person.

(L) If the commission finds the respondent has not violated a code or statutory provision or a rule adopted under this chapter, IC 4-2-7, or IC 4-2-8, it shall dismiss the charges.

(3) Review all conflict of interest disclosures received by the commission under IC 35-44-1-3, maintain an index of those disclosures, and issue advisory opinions and screening procedures as set forth in section 9 of this chapter.

(c) Notwithstanding ~~IC 5-14-3-4(b)(8)(C)~~, **IC 5-14-3-4(b)(9)(C)**, the records of the commission concerning the case of a respondent that are not confidential under IC 5-14-3-4(b)(2)(C) shall be available for inspection and copying in accordance with IC 5-14-3.

SECTION 3. IC 5-14-1.5-6.1, AS AMENDED BY P.L.101-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6.1. (a) As used in this section, "public official" means a person:

- (1) who is a member of a governing body of a public agency; or
- (2) whose tenure and compensation are fixed by law and who executes an oath.

(b) Executive sessions may be held only in the following instances:

- (1) Where authorized by federal or state statute.
- (2) For discussion of strategy with respect to any of the following:
 - (A) Collective bargaining.
 - (B) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing.
 - (C) The implementation of security systems.
 - (D) The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.

However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.

(3) For discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems.

(4) Interviews with industrial or commercial prospects or agents of industrial or commercial prospects by the Indiana economic development corporation, the office of tourism development, the

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Indiana finance authority, or economic development commissions.

(5) To receive information about and interview prospective employees.

(6) With respect to any individual over whom the governing body has jurisdiction:

(A) to receive information concerning the individual's alleged misconduct; and

(B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is:

(i) a physician; or

(ii) a school bus driver.

(7) For discussion of records classified as confidential by state or federal statute.

(8) To discuss before a placement decision an individual student's abilities, past performance, behavior, and needs.

(9) To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.

(10) When considering the appointment of a public official, to do the following:

(A) Develop a list of prospective appointees.

(B) Consider applications.

(C) Make one (1) initial exclusion of prospective appointees from further consideration.

Notwithstanding ~~IC 5-14-3-4(b)(12)~~, **IC 5-14-3-4(b)(13)**, a governing body may release and shall make available for inspection and copying in accordance with IC 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.

(11) To train school board members with an outside consultant about the performance of the role of the members as public officials.

(12) To prepare or score examinations used in issuing licenses, certificates, permits, or registrations under IC 15-5-1.1 or IC 25.

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(13) To discuss information and intelligence intended to prevent, mitigate, or respond to the threat of terrorism.

(c) A final action must be taken at a meeting open to the public.

(d) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

(e) A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection.

SECTION 4. IC 5-14-3-4, AS AMENDED BY P.L.101-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

- (1) Those declared confidential by state statute.
- (2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.
- (3) Those required to be kept confidential by federal law.
- (4) Records containing trade secrets.
- (5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.
- (6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:
 - (A) concerning any negotiations made with respect to the research; and
 - (B) received from another party involved in the research.
- (7) Grade transcripts and license examination scores obtained as part of a licensure process.
- (8) Those declared confidential by or under rules adopted by the

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supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the board of the Indiana economic development corporation under IC 5-28-16.

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(12) A Social Security number contained in the records of a public agency.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the Indiana finance authority, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the Indiana finance authority, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the

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information being disclosed accurately and completely represents the terms of the final offer.

(6) Records relating to discussions or negotiations between a public agency and a nongovernmental entity to provide services that are provided directly by the employees of a state agency, if those records are created while discussions or negotiations are in progress. However, with the exception of parts that are prohibited under this chapter from being disclosed, all records relating to the discussions and negotiations (including those records created while discussions or negotiations are in progress) with the offerors including the terms of any offer submitted shall be available for inspection and copying after negotiations with the offerors have been completed.

~~(6)~~ (7) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

~~(7)~~ (8) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

~~(8)~~ (9) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

~~(9)~~ (10) Minutes or records of hospital medical staff meetings.

~~(10)~~ (11) Administrative or technical information that would jeopardize a record keeping or security system.

~~(11)~~ (12) Computer programs, computer codes, computer filing

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1 systems, and other software that are owned by the public agency
 2 or entrusted to it and portions of electronic maps entrusted to a
 3 public agency by a utility.

4 ~~(12)~~ **(13)** Records specifically prepared for discussion or
 5 developed during discussion in an executive session under
 6 IC 5-14-1.5-6.1. However, this subdivision does not apply to that
 7 information required to be available for inspection and copying
 8 under subdivision ~~(8)~~: **(9)**.

9 ~~(13)~~ **(14)** The work product of the legislative services agency
 10 under personnel rules approved by the legislative council.

11 ~~(14)~~ **(15)** The work product of individual members and the
 12 partisan staffs of the general assembly.

13 ~~(15)~~ **(16)** The identity of a donor of a gift made to a public agency
 14 if:

15 (A) the donor requires nondisclosure of the donor's identity as
 16 a condition of making the gift; or

17 (B) after the gift is made, the donor or a member of the donor's
 18 family requests nondisclosure.

19 ~~(16)~~ **(17)** Library or archival records:

20 (A) which can be used to identify any library patron; or

21 (B) deposited with or acquired by a library upon a condition
 22 that the records be disclosed only:

23 (i) to qualified researchers;

24 (ii) after the passing of a period of years that is specified in
 25 the documents under which the deposit or acquisition is
 26 made; or

27 (iii) after the death of persons specified at the time of the
 28 acquisition or deposit.

29 However, nothing in this subdivision shall limit or affect contracts
 30 entered into by the Indiana state library pursuant to IC 4-1-6-8.

31 ~~(17)~~ **(18)** The identity of any person who contacts the bureau of
 32 motor vehicles concerning the ability of a driver to operate a
 33 motor vehicle safely and the medical records and evaluations
 34 made by the bureau of motor vehicles staff or members of the
 35 driver licensing medical advisory board regarding the ability of a
 36 driver to operate a motor vehicle safely. However, upon written
 37 request to the commissioner of the bureau of motor vehicles, the
 38 driver must be given copies of the driver's medical records and
 39 evaluations.

40 ~~(18)~~ **(19)** School safety and security measures, plans, and systems,
 41 including emergency preparedness plans developed under 511
 42 IAC 6.1-2-2.5.

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(19) (20) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:

(A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;

(B) vulnerability assessments;

(C) risk planning documents;

(D) needs assessments;

(E) threat assessments;

(F) intelligence assessments;

(G) domestic preparedness strategies;

(H) the location of community drinking water wells and surface water intakes;

(I) the emergency contact information of emergency responders and volunteers;

(J) infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems; and

(K) detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency. A record described in this clause may not be released for public inspection by any public agency without the prior approval of the public agency that owns, occupies, leases, or maintains the airport. The public agency that owns, occupies, leases, or maintains the airport:

(i) is responsible for determining whether the public disclosure of a record or a part of a record has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack; and

(ii) must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under ~~IC 5-14-3-4(b)(19)~~ **clause (J)** without approval of (insert name of submitting public agency)".

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under

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1 IC 35-47-12-1 or an act of agricultural terrorism under
 2 IC 35-47-12-2 has occurred at that location or structure, unless
 3 release of the record or portion of the record would have a
 4 reasonable likelihood of threatening public safety by exposing a
 5 vulnerability of other locations or structures to terrorist attack.

6 ~~(20)~~ (21) The following personal information concerning a
 7 customer of a municipally owned utility (as defined in
 8 IC 8-1-2-1):

9 (A) Telephone number.

10 (B) Address.

11 (C) Social Security number.

12 ~~(21)~~ (22) The following personal information about a complainant
 13 contained in records of a law enforcement agency:

14 (A) Telephone number.

15 (B) The complainant's address. However, if the complainant's
 16 address is the location of the suspected crime, infraction,
 17 accident, or complaint reported, the address shall be made
 18 available for public inspection and copying.

19 (c) Nothing contained in subsection (b) shall limit or affect the right
 20 of a person to inspect and copy a public record required or directed to
 21 be made by any statute or by any rule of a public agency.

22 (d) Notwithstanding any other law, a public record that is classified
 23 as confidential, other than a record concerning an adoption, shall be
 24 made available for inspection and copying seventy-five (75) years after
 25 the creation of that record.

26 (e) Notwithstanding subsection (d) and section 7 of this chapter:

27 (1) public records subject to IC 5-15 may be destroyed only in
 28 accordance with record retention schedules under IC 5-15; or

29 (2) public records not subject to IC 5-15 may be destroyed in the
 30 ordinary course of business.

31 SECTION 5. IC 5-14-3-4.2 IS ADDED TO THE INDIANA CODE
 32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 33 1, 2007]: **Sec. 4.2. (a) This section applies to a person that:**

34 **(1) is not a government entity; and**

35 **(2) contracts with and receives public funds from a public**
 36 **agency to conduct a study or prepare a report for a public**
 37 **agency.**

38 **(b) Any records generated or received by the person in**
 39 **preparing the study or report, including any data, research, or**
 40 **work papers, shall be available for public inspection and copying**
 41 **under this chapter as if the person were a public agency.**

42 SECTION 6. IC 5-14-3-4.3 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4.3. Nothing contained
 2 in section ~~4(b)(8)~~ **4(b)(9)** of this chapter requires a law enforcement
 3 agency to release to the public the job title or job description of law
 4 enforcement officers.

5 SECTION 7. IC 5-14-3-9, AS AMENDED BY P.L.22-2005,
 6 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2007]: Sec. 9. (a) A denial of disclosure by a public agency
 8 occurs when the person making the request is physically present in the
 9 office of the agency, makes the request by telephone, or requests
 10 enhanced access to a document and:

11 (1) the person designated by the public agency as being
 12 responsible for public records release decisions refuses to permit
 13 inspection and copying of a public record when a request has
 14 been made; or

15 (2) twenty-four (24) hours elapse after any employee of the public
 16 agency refuses to permit inspection and copying of a public
 17 record when a request has been made;

18 whichever occurs first.

19 (b) If a person requests by mail or by facsimile a copy or copies of
 20 a public record, a denial of disclosure does not occur until seven (7)
 21 days have elapsed from the date the public agency receives the request.

22 (c) If a request is made orally, either in person or by telephone, a
 23 public agency may deny the request orally. However, if a request
 24 initially is made in writing, by facsimile, or through enhanced access,
 25 or if an oral request that has been denied is renewed in writing or by
 26 facsimile, a public agency may deny the request if:

27 (1) the denial is in writing or by facsimile; and

28 (2) the denial includes:

29 (A) a statement of the specific exemption or exemptions
 30 authorizing the withholding of all or part of the public record;
 31 and

32 (B) the name and the title or position of the person responsible
 33 for the denial.

34 (d) This subsection applies to a board, a commission, a department,
 35 a division, a bureau, a committee, an agency, an office, an
 36 instrumentality, or an authority, by whatever name designated,
 37 exercising any part of the executive, administrative, judicial, or
 38 legislative power of the state. If an agency receives a request to inspect
 39 or copy a record that the agency considers to be excepted from
 40 disclosure under section ~~4(b)(19)~~ **4(b)(20)** of this chapter, the agency
 41 may consult with the counterterrorism and security council established
 42 by IC 10-19-8-1. If an agency denies the disclosure of a record or a part

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of a record under section ~~4(b)(19)~~ **4(b)(20)** of this chapter, the agency or the counterterrorism and security council shall provide a general description of the record being withheld and of how disclosure of the record would have a reasonable likelihood of threatening the public safety.

(e) A person who has been denied the right to inspect or copy a public record by a public agency may file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public record. Whenever an action is filed under this subsection, the public agency must notify each person who supplied any part of the public record at issue:

(1) that a request for release of the public record has been denied; and

(2) whether the denial was in compliance with an informal inquiry response or advisory opinion of the public access counselor.

Such persons are entitled to intervene in any litigation that results from the denial. The person who has been denied the right to inspect or copy need not allege or prove any special damage different from that suffered by the public at large.

(f) The court shall determine the matter de novo, with the burden of proof on the public agency to sustain its denial. If the issue in de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(a) of this chapter, the public agency meets its burden of proof under this subsection by establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit.

(g) If the issue in a de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(b) of this chapter:

(1) the public agency meets its burden of proof under this subsection by:

(A) proving that the record falls within any one (1) of the categories of exempted records under section 4(b) of this chapter; and

(B) establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit; and

(2) a person requesting access to a public record meets the person's burden of proof under this subsection by proving that the denial of access is arbitrary or capricious.

(h) The court may review the public record in camera to determine

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whether any part of it may be withheld under this chapter.

(i) In any action filed under this section, a court shall award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff substantially prevails; or

(2) the defendant substantially prevails and the court finds the action was frivolous or vexatious.

The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary because the denial of access to a public record under this chapter would prevent the plaintiff from presenting that public record to a public agency preparing to act on a matter of relevance to the public record whose disclosure was denied.

(j) A court shall expedite the hearing of an action filed under this section.

SECTION 8. IC 8-1-22.5-6.1, AS ADDED BY P.L.118-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6.1. (a) If the commission or division determines that a report or part of a report filed under this chapter is confidential under IC 5-14-3-4(a), the report or part of the report shall be excepted from disclosure under IC 5-14-3-3 as provided in IC 5-14-3-4(a).

(b) If the commission or division determines under ~~IC 5-14-3-4(b)(19)~~ **IC 5-14-3-4(b)(20)** that the disclosure of a report or part of a report filed under this chapter has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack, the commission or division may except the report or part of the report from disclosure under IC 5-14-3-3 as provided in IC 5-14-3-4(b).

SECTION 9. IC 8-1-34-17.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 17.5. Notwithstanding any other statute or rule, a certificate issued under this chapter is a public record and subject to inspection and copying under IC 5-14-3.**

SECTION 10. IC 8-15.5-4-6, AS ADDED BY P.L.47-2006, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) The authority may not disclose the contents of proposals during discussions or negotiations with eligible offerors.

(b) The authority may, in its discretion in accordance with IC 5-14-3, treat as confidential all records relating to discussions or negotiations between the authority and eligible offerors if those records

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are created while discussions or negotiations are in progress.

(c) Notwithstanding subsections (a) and (b), and with the exception of parts that are confidential under IC 5-14-3, the **records relating to the discussions and negotiations including the terms of the selected offer negotiated any offer submitted** under this article shall be available for inspection and copying under IC 5-14-3 after negotiations with the offerors have been completed.

(d) When disclosing the terms of the selected offer under subsection (c), the authority shall certify that the information being disclosed accurately and completely represents the terms of the selected offer.

SECTION 11. IC 8-15.7-4-6, AS ADDED BY P.L.47-2006, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) The department may not disclose the contents of proposals during discussions or negotiations with potential offerors.

(b) The department may, in its discretion in accordance with IC 5-14-3, treat as confidential all records relating to discussions or negotiations between the department and potential offerors if those records are created while discussions or negotiations are in progress.

(c) Notwithstanding subsections (a) and (b), and with the exception of portions that are confidential under IC 5-14-3, **the records relating to the discussions or negotiations including the terms of the selected offer negotiated any offer submitted** under this article shall be available for inspection and copying under IC 5-14-3 after negotiations with the offerors have been completed.

(d) When disclosing the terms of the selected offer under subsection (c), the department shall certify that the information being disclosed accurately and completely represents the terms of the selected offer.

(e) The department shall disclose the contents of all proposals, except the parts of the proposals that may be treated as confidential in accordance with IC 5-14-3, when either:

- (1) the request for proposal process is terminated under section 5 of this chapter; or
- (2) the public-private agreement has been executed and the closing for each financing transaction required to provide funding to carry out the agreement has been conducted.

SECTION 12. IC 33-23-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. The files of applicants for appointment as a magistrate, including the names of applicants, are confidential as provided in ~~IC 5-14-3-4(b)(8)~~. **IC 5-14-3-4(b)(9).**

SECTION 13. IC 33-27-3-2 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) The judicial nominating commission shall submit to the governor, from those names the commission considers for a vacancy, the names of only the three (3) most highly qualified candidates. In determining which candidates are most highly qualified each commission member shall evaluate each candidate, in writing, on the following considerations:

(1) Legal education, including law schools attended and education after law school, and any academic honors and awards achieved.

(2) Legal writings, including legislative draftings, legal briefs, and contributions to legal journals and publications.

(3) Reputation in the practice of law, as evaluated by attorneys and judges with whom the candidate has had professional contact, and the type of legal practice, including experience and reputation as a trial lawyer or trial judge.

(4) Physical condition, including general health, stamina, vigor, and age.

(5) Financial interests, including any interest that might conflict with the performance of judicial responsibilities.

(6) Activities in public service, including writings and speeches concerning public affairs and contemporary problems, and efforts and achievements in improving the administration of justice.

(7) Any other pertinent information that the commission feels is important in selecting the most highly qualified individuals for judicial office.

(b) The commission may not make an investigation to determine these considerations until the individual states in writing that the individual desires to hold a judicial office that has been or will be created by a vacancy and that the individual consents to the public disclosure of information under subsections (d) and (g).

(c) The commission shall inquire into the personal and legal backgrounds of each candidate by investigations made independent from the statements on an application of the candidate or in an interview with the candidate. In completing these investigations, the commission may use information or assistance provided by:

(1) a law enforcement agency;

(2) any organization of lawyers, judges, or individual practitioners; or

(3) any other person or association.

(d) The commission shall publicly disclose the names of all candidates who have filed for judicial appointment after the commission has received the consent required by subsection (b) but before the commission has begun to evaluate any of the candidates. If

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the commission's screening of the candidates for judicial appointment occurs in an executive session conducted under IC 5-14-1.5-6.1(b)(10), the screening may not reduce the number of candidates for further consideration to fewer than ten (10) individuals unless there are fewer than ten (10) individuals from which to choose before the screening. When the commission's screening has reduced the number of candidates for further consideration to not less than ten (10) or it has less than ten (10) eligible candidates otherwise from which to choose, the commission shall:

- (1) publicly disclose the names of the individuals and their applications before taking any further action; and
- (2) give notice of any further action in the same manner that notice is given under IC 5-14-1.5.

(e) Information described in subsection (d)(1) is identifying information for the purposes of IC 5-14-1.5-6.1(b)(10).

(f) The commission shall submit with the list of three (3) nominees to the governor its written evaluation of each nominee, based on the considerations set forth in subsection (a). The list of names submitted to the governor and the written evaluation of each nominee shall be publicly disclosed by the commission.

(g) Notwithstanding IC 5-14-3-4, all public records (as defined in IC 5-14-3-2) of the judicial nominating commission are subject to IC 5-14-3-3, including records described in ~~IC 5-14-3-4(b)(12)~~. **IC 5-14-3-4(b)(13)**. However, the following records are excepted from public inspection and copying at the discretion of the judicial nominating commission:

- (1) Personnel files of commission employees and files of applicants for employment with the commission to the extent permitted under ~~IC 5-14-3-4(b)(8)~~. **IC 5-14-3-4(b)(9)**.
- (2) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1, unless the records are prepared for use in the consideration of a candidate for judicial appointment.
- (3) Investigatory records prepared for the commission under subsection (c) until:
 - (A) the records are filed or introduced into evidence in connection with the consideration of a candidate;
 - (B) the records are publicly discussed by the commission in connection with the consideration of a candidate;
 - (C) a candidate elects to have the records released by the commission; or
 - (D) the commission elects to release the records that the

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- 1 commission considers appropriate in response to publicly
 2 disseminated statements relating to the activities or actions of
 3 the commission;
 4 whichever occurs first.
- 5 (4) Applications of candidates for judicial appointment who are
 6 not among the applicants eligible for further consideration
 7 following the commission's screening under subsection (d).
- 8 (5) The work product of an attorney (as defined in IC 5-14-3-2)
 9 representing the commission.
- 10 (h) When an event described by subsection (g)(3) occurs, the
 11 investigatory record becomes available for public inspection and
 12 copying under IC 5-14-3-3.
- 13 (i) As used in this subsection, "attributable communication" refers
 14 to a communication containing the sender's name, address, and
 15 telephone number. The commission shall provide a copy of all
 16 attributable communications concerning a candidate for judicial
 17 appointment to each member of the commission. An attributable
 18 communication becomes available for public inspection and copying
 19 under IC 5-14-3-3 after a copy is provided to each member of the
 20 commission. The commission may not consider a communication other
 21 than an attributable communication in evaluating a candidate for
 22 judicial appointment.
- 23 (j) The commission shall release the investigatory records prepared
 24 for the commission under subsection (c) to the candidate for judicial
 25 appointment described by the records.

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